

**JUDGE CHIN**

DUANE MORRIS LLP  
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and

GREENEBAUM DOLL & MCDONALD PLLC  
Janet P. Jakubowicz (pro hac application to be filed)  
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3500 National City Tower  
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Attorneys for Defendant  
Caudill Seed & Warehouse Co. d/b/a Caudill Seed Co.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

07 CIV 7845

-----X  
BRASSICA PROTECTION PRODUCTS, L.L.C.,

Plaintiff,

-against-

CAUDILL SEED & WAREHOUSE CO., INC.  
d/b/a CAUDILL SEED CO.,

Defendant.  
-----X

Civil Action No.

**NOTICE OF REMOVAL**

Defendant, Caudill Seed & Warehouse Co., Inc. d/b/a Caudill Seed Co. ("CSC"), through counsel, hereby files this Notice of Removal with the United States District Court for the Southern District of New York, and in support of same, respectfully states as follows:

1. On August 6, 2007, a civil action captioned Brassica Protection Products LLC v. Caudill Seed & Warehouse Co., Inc. d/b/a Caudill Seed Co., Index No. 602664/07 (hereinafter the "State Court Action"), was filed in the Supreme Court of the State of New York, New York County. Copies of the Summons and Complaint are attached as Exhibit A.

2. A review of the file from the New York County Clerk's Office reveals that the only documents on file are the original Summons and Complaint, and an Affidavit of Service sworn to on August 7, 2007. Attached as Exhibit B is a copy of the Affidavit of Service. Accordingly, as required by Local Rule 83.1, the copies of the Summons and Complaint attached as Exhibit A and the Affidavit of Service attached as Exhibit B constitute the entirety of the pleadings filed in the State Court Action. Based upon the State Court Action's file, no further proceedings have taken place in the State Court Action.

3. A copy of the Summons and Complaint attached as Exhibit A was purportedly served on CSC on August 7, 2007.

4. Therefore, this Notice of Removal is being filed in a timely manner pursuant to 28 U.S.C. § 1446(b), as it is within 30 days after purported service of copy of the Complaint upon CSC.

5. Pursuant to 28 U.S.C. § 1331, this Court has original federal question jurisdiction over the State Court Action based upon Plaintiff's causes of action for Trademark Infringement and Tarnishment under 15 U.S.C. § 1125(a). As such, the State Court Action may be removed to this Court pursuant to 28 U.S.C. § 1441 as this Court has subject matter jurisdiction based upon these federal questions presented by Plaintiff in its Complaint.

6. Furthermore, any claims as to which this Court has not been expressly granted jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441 are properly within this Court's

supplemental jurisdiction pursuant to 28 U.S.C. § 1367 as they are so related to the claims within this Court's original jurisdiction that they share a common nucleus of operative fact and form part of the same case or controversy. There is no ground upon which this Court should decline to exercise its supplemental jurisdiction under 28 U.S.C. § 1367(c).

7. By this Notice of Removal, CSC does not waive any defenses available to it in this action, including lack of service of process, insufficiency of process, lack of personal jurisdiction, improper venue or any other procedural or substantive defects concerning the allegations in the Complaint.

8. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be served upon the Plaintiff.

9. Pursuant to 28 U.S.C. § 1446(d), written notice of this Notice of Removal and a true and correct copy thereof will be filed with the Supreme Court of the State of New York, New York County.

10. This Notice of Removal has been verified by the undersigned counsel for CSC pursuant to 28 U.S.C. § 1446(a) and with respect to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, CSC respectfully notifies this Court that the State Court Action pending in the Supreme Court of the State of New York, New York County, bearing Index No. 602664/07, has been removed to this Court in accordance with the foregoing statutory provisions.

Dated: New York, N.Y.  
September 5, 2007

Respectfully submitted,

DUANE MORRIS LLP

By:



Gregory P. Gulia (GG 4215)  
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1540 Broadway  
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Attorneys for Defendant  
Caudill Seed & Warehouse Co. d/b/a  
Caudill Seed Co.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the Notice of Removal to be served by U.S. first class mail, postage prepaid, this 5th day of September, 2007 to:

Edward L. Powers, Esq.  
Bingham McCutchen LLP  
399 Park Avenue  
New York, N.Y. 10022

  
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Vanessa C. Hew

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